

DISTRICT OF COLUMBIA

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ALCOHOLIC BEVERAGE CONTROL BOARD

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MEETING

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IN THE MATTER OF:

Case # 14-CMP-00325  
2461 Corporation,  
t/a Madam's Organ  
2461 18th Street NW  
License #25273  
Retailer CT  
ANC 1C

Show Cause  
Hearing

April 1, 2015

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The Alcoholic Beverage Control Board met in  
Alcoholic Beverage Control Hearing Room, Reeves  
Building, 2000 14th Street N.W., Washington,  
D.C., Ms. La Verne Fletcher, Agent, presiding.

PRESENT:

RUTHANNE MILLER, Chairperson  
NICK ALBERTI, Member  
DONALD BROOKS, Member  
HECTOR RODRIGUEZ, Member  
MICHAEL SILVERSTEIN, Member  
JAMES SHORT, Member  
HERMAN JONES, Member

ALSO PRESENT:

Earl Jones, Investigator, ABRA

1 P-R-O-C-E-E-D-I-N-G-S

2 (9:50 a.m.)

3 CHAIRMAN MILLER: Okay, our next case  
4 is the Madam's Organ case, Case No. 14-CMP-00325.  
5 Madam's Organ is located at 2461 18th Street NW,  
6 License #25273 in ANC 1C. It's scheduled for 10  
7 a.m. It's now 9:51, but we're ready to start if  
8 the parties academic are all here and ready.  
9 Otherwise, we'll wait.

10 MR. RIVERO: Good morning board  
11 members, Fernando Rivero for the District of  
12 Columbia.

13 CHAIRMAN MILLER: Good morning.

14 MR. BIANCO: Good morning, Madame  
15 Chair and members of the Board, Richard Bianco on  
16 behalf of the licensee. I have Bill Duggan, the  
17 licensee's representative. And I do have two  
18 witnesses as well.

19 CHAIRMAN MILLER: And you have two  
20 other witnesses as well?

21 MR. BIANCO: I have two witnesses,  
22 yes. They're here.

1 CHAIRMAN MILLER: Okay. So everybody  
2 is here, ready to start? Unless -- is that  
3 correct? Is everybody here?

4 MR. RIVERO: And the Government's  
5 witness is here. Indulgence, please.

6 CHAIRMAN MILLER: Okay.

7 (Off-microphone conversation)

8 MR. RIVERO: We're ready.

9 CHAIRMAN MILLER: Okay, so are there  
10 any preliminary issues before we start?

11 MR. RIVERO: None from the Government.

12 CHAIRMAN MILLER: Okay. Any  
13 preliminary issues?

14 MR. BIANCO: No preliminary issues.

15 CHAIRMAN MILLER: All right then, is  
16 the Government ready to proceed?

17 MR. RIVERO: The Government is ready.

18 CHAIRMAN MILLER: All right.

19 MR. RIVERO: Good morning, board  
20 members. We're here today in the Show Cause  
21 matter of 2461 Corporation trading as Madam's  
22 Organ located at 2641 18th Street NW.

1           The Show Cause notice issued indicated  
2           that the licensee violated a settlement agreement  
3           by not keeping the windows of the establishment  
4           closed after 12:30 a.m. when music, live music  
5           was being played. This is pursuant to DC Code  
6           25-446.

7           In our case the Government will  
8           present evidence which we believe by a  
9           preponderance will show, based on the witness'  
10          testimony, the ABRA Investigator Jones, that the  
11          licensee did, in fact, fail to keep the window  
12          be-sached and closed on a particular evening.  
13          Thank you.

14                 CHAIRMAN MILLER: Thank you. Mr.  
15          Bianco?

16                 MR. BIANCO: I'll reserve until  
17          presentation of the case issues.

18                 CHAIRMAN MILLER: Okay. Do you want  
19          to call your first witness, Mr. Rivero?

20                 MR. RIVERO: The Government will call  
21          Investigator Jones.

22                 MEMBER ALBERTI: Would you like some

1 water, Mr. Rivero?

2 MR. RIVERO: Thank you.

3 CHAIRMAN MILLER: Good morning.

4 MR. JONES: Good morning.

5 WHEREUPON,

6 EARL JONES

7 was called as a witness by Counsel for the Agency  
8 and, having been first duly sworn, assumed the  
9 witness stand, was examined and testified as  
10 follows:

11 DIRECT EXAMINATION

12 BY MR. RIVERO:

13 Q Good morning. Please state your name.

14 A Earl Jones.

15 Q What is your occupation, Mr. Jones?

16 A I'm a Compliance Investigator with the  
17 Alcoholic Beverage Regulation Administration.

18 Q How long have you been employed with  
19 the Alcoholic Beverage Regulation Administration?

20 A Since September of 2009.

21 Q Thank you. What are your duties as an  
22 investigator with the Agency?

1           A       I conduct inspections and  
2       investigations of licensed ABC establishments  
3       with the District of Columbia.

4           Q       Thank you. Are you familiar with the  
5       establishment known as Madam's Organ in --

6                   MEMBER ALBERTI: Mr. Jones?

7                   CHAIRMAN MILLER: Mr. Jones, can you  
8       speak up a little bit?

9                   THE WITNESS: Yes, sir.

10                  BY MR. RIVERO:

11           Q       How are you familiar with the  
12       establishment known as Madam's Organ?

13           A       Throughout my tenure here with the  
14       Agency I have monitored the establishment on a  
15       few occasions and on the night in question I came  
16       in contact with the establishment.

17           Q       I'd like to turn your attention to the  
18       morning of June 22, 2014. What were you doing at  
19       that point?

20           A       The morning of June 22, 2014 I was  
21       monitoring Adams Morgan area as a member of the  
22       Noise Task Force.

1           Q       Okay. And did you have occasion to  
2 visit the establishment?

3           A       Yes, sir.

4           Q       And what time did you arrive at the  
5 establishment?

6           A       I arrived at the establishment  
7 approximately between 1:30 and 1:33 a.m.

8           Q       Okay. What happened when you arrived?

9           A       Upon arrival, immediately heard music  
10 emanating from the establishment out into the  
11 street level. As I walked up to the  
12 establishment I observed that there was a front  
13 window that was open with a live band playing in  
14 the, right in front of the window.

15          Q       You observed the window open on --  
16 where was that located? Ground floor, second  
17 floor, third floor? Any floor?

18          A       It was on the ground floor.

19          Q       Thank you. After you made that  
20 observation what happened?

21          A       Members of the Noise Task Force, we  
22 were standing in front of the establishment,

1 along with myself, and there was a gentleman who  
2 walked over to us who indicated he was an  
3 employee of the establishment. I identified  
4 myself as well as the Noise Task Force members  
5 and asked for an ABC manager or owner.

6 Q And what happened after that?

7 A At that point he had gone back in to  
8 notify the ABC manager, who did come out to speak  
9 with us.

10 Q And who was that?

11 A Mr. Wilcox.

12 Q And what happened after Mr. Wilcox  
13 came out?

14 A At that point I, again, identified  
15 myself and, as well as the Noise Task Force  
16 members and advised him as to the reason why we  
17 were there. I told him that we overhead, you  
18 know, the music from the band that, as far as the  
19 music, the noise that emanated onto the street  
20 level and with the window being open. And I  
21 showed him where the window was open.

22 Q And then what happened?

1           A       At that point I asked him to review  
2       the ABC license and all of the, his Government  
3       documentation for the establishment as well as  
4       the settlement agreement which he did go back in  
5       and brought back outside.

6           Q       And what did he bring outside?

7           A       He brought all of the documentation.  
8       He had the ABC license, the certificate of  
9       occupancy, settlement agreement, invoices, those  
10      types of things.

11          Q       Did you discuss the settlement  
12      agreement with him?

13          A       Yes, sir.

14          Q       What was your discussion?

15          A       I notified him that the establishment,  
16      while having a live band playing, could not have  
17      any windows or doors open, and which he  
18      acknowledged and said that he would close the  
19      window immediately.

20          Q       And what happened after that?

21          A       At that point he did go inside, did  
22      close the window.

1 Q Okay.

2 A And that was pretty much it.

3 Q Okay. So you discusses the settlement  
4 agreement?

5 A Yes.

6 Q He actually had the document?

7 A Yes.

8 Q Was that your copy or the  
9 establishment's copy?

10 A No, Mr. Wilcox provided a copy of it.

11 Q Okay. All right. I'm going to go  
12 ahead and show you what's marked as Government's  
13 Exhibit 1 for identification. The licensee has a  
14 copy of that exhibit. And I'm going to ask that  
15 you if you can identify what this document is.

16 (Whereupon, the document referred to  
17 was marked as Government's Exhibit 1 for  
18 identification.)

19 A Okay. This is the case report that I  
20 wrote for the establishment.

21 Q Take a moment to look through it to  
22 make sure that it's a complete --

1 A Okay.

2 Q -- copy of your --

3 A Yes, it is.

4 MR. RIVERO: The Government would move  
5 the admission of Government Exhibit 1, the  
6 investigator's report, into evidence at this  
7 time.

8 MR. BIANCO: No objection.

9 CHAIRMAN MILLER: Admitted.

10 (Whereupon, the document previously  
11 marked as Government's Exhibit 1 for  
12 identification was received into evidence.)

13 BY MR. RIVERO:

14 Q I would like you to take a look at  
15 Exhibit 1. You have a number of attachments to  
16 that report. I'd like you to take a look at -- I  
17 think you called it Exhibits, Exhibit 4 of your  
18 report.

19 A Yes, sir.

20 Q And identify that, please.

21 A Exhibit 4 is a copy of Madam's Organs  
22 Restaurant's settlement agreement.

1           Q       And if you -- that document, the  
2       settlement agreement, I'd like you to take a look  
3       at Page 3 of that document.

4           A       Yes, sir.

5           Q       What does it say about noise and  
6       windows there on that page?

7           A       Okay. On Page 3 of the settlement  
8       agreement, under No. 4, the heading is  
9       Noise/Music/Dancing. Under (b) it says, "Except  
10      when persons are in the act of using the door for  
11      ingress to or egress from the premises the doors  
12      and windows of the establishment will remain  
13      closed from 12:30 a.m. until closing when live  
14      music is being played or a sound amplification  
15      device other than the loud speaker referenced in  
16      Paragraph (d) below is being employed in the  
17      premises."

18          Q       Thank you.

19          A       Mm-hmm.

20          Q       So you indicated on that evening, or  
21      the morning rather, of June 22nd you were able to  
22      see the band playing through the open window?

1           A       Yes, sir.

2           Q       How far away were you from the window  
3 were you resting?

4           A       We were probably maybe ten feet away  
5 from the -- 15 feet away from the window.

6           Q       Okay. And what do you recall in terms  
7 of the band that you were able to see?

8           A       I was able to see what I believe was  
9 probably a two or three-piece band that was in  
10 window.

11          Q       All right. Your report also has an  
12 attachment and what you call Exhibit 2 in your  
13 report. What's the document -- photograph.  
14 What's that photograph? And I'd like you to  
15 identify that.

16          A       That is the lower level, that's the  
17 street level of Madam's Organ, and that is the  
18 picture of the shot that I took where the front  
19 window was open, where the band was playing.

20          Q       This is the photograph you took?

21          A       Yes, sir.

22          Q       Okay.

1 MR. RIVERO: No further questions.

2 CHAIRMAN MILLER: Okay. Mr. Bianco?

3 MR. BIANCO: Yes.

4 CROSS-EXAMINATION

5 BY MR. BIANCO:

6 Q Mr. Jones, you testified that you  
7 monitored this establishment on several  
8 occasions. That's correct?

9 A I monitored the area, yes and -- yes.

10 Q Have you had occasion to monitor  
11 Madam's Organ specifically?

12 A I've monitored the establishment.  
13 I've never been inside.

14 Q Okay. Had you ever had occasion to  
15 write them up for a violation?

16 A No, sir.

17 Q You mentioned that what brought you to  
18 Adams Morgan on that particular night was a Noise  
19 Task Force.

20 A Yes, sir.

21 Q Okay. And that's part of some joint  
22 effort between MPD, ABRA and DCRA?

1 A Yes, sir.

2 Q Okay. And you had a briefing at 10  
3 p.m.?

4 A Yes, sir.

5 Q And in that briefing did you  
6 specifically decide to visit Madam's Organ?

7 A It wasn't my decision. My supervisor  
8 is the one that constructs the list as far as  
9 monitoring establishments. And he provides the  
10 list for us when he'd come in for that evening.

11 Q And was there any discussion in that  
12 briefing about why you would, wanted to visit my  
13 client's establishment, particularly?

14 A There was a complaint from neighbors  
15 regarding loud music.

16 Q Okay. And had that complaint ever  
17 been provided to my client, to your knowledge?

18 A I have no idea. I don't know.

19 Q And when you arrived at the  
20 establishment you testified that you spoke with  
21 Carlos Wilcox, the ABC manager on duty that  
22 evening?

1           A       Yes, sir.

2           Q       And did you have a conversation with  
3 Mr. Wilcox about why you had visited Madam's  
4 Organ that evening?

5           A       Yes, sir.

6           Q       Okay. And in that conversation did  
7 you state to Mr. Wilcox the reason why you were  
8 there is because you wanted to show the members  
9 of the task force an establishment that does  
10 things the right way?

11          A       I don't -- I don't recall that.

12          Q       Is it possible that you had that  
13 conversation?

14          A       I don't recall that.

15          Q       Now you gave some testimony about the  
16 window in the front of the establishment being  
17 open. Are there -- do you recall if there's one  
18 or multiple windows in the front of the  
19 establishment?

20          A       I recall -- well, the window that I  
21 saw was, there was one window that was open. I  
22 believe that there are multiple windows in front

1 of the establishment though.

2 Q And from the inside of the  
3 establishment the stage and the band is directly  
4 in front of that window. Correct?

5 A Again, that night I didn't go inside,  
6 but I could see that the band members were right  
7 in front of the window so that's what I would  
8 assume.

9 Q Okay. And do you recall whether or  
10 not these windows swing out, swing in or if they  
11 slide or how they specifically open?

12 A I believe that it's either a slide  
13 over or swing. I can't recall which one. I  
14 believe it's a slide though.

15 Q Okay. I'm going to show you a  
16 document that will hopefully refresh your  
17 recollection. So I'm not marking this as an  
18 exhibit yet. Actually, I'm going to show you two  
19 documents. CHAIRMAN MILLER: Mr. Rivero  
20 has those documents too?

21 MR. BIANCO: He does.

22 CHAIRMAN MILLER: Okay.

1 MR. RIVERO: Okay.

2 MR. BIANO: Did you want to hold off?

3 MR. RIVERO: Okay.

4 MR. BIANCO: Since you may have some  
5 issues with that.

6 BY MR. BIANCO:

7 Q Now, having had the opportunity to  
8 review those pictures, do you now recall whether  
9 or not the windows swing in or out?

10 A Yeah, it looks like they fold.

11 Q Okay.

12 A Yes.

13 Q And they fold into the establishment.

14 A Yes, sir.

15 Q Correct?

16 A Yes, sir.

17 Q And if we could look at your,  
18 specifically, Exhibit 2 to your report --

19 A Mm-hmm.

20 Q It looks like there's some equipment  
21 for the band inside of the window there.

22 A Yes, sir.

1           Q       And could you say whether or not that  
2 equipment would have impeded the windows from  
3 opening all the way?

4           A       I can't comment on that because,  
5 again, I didn't go inside. So I couldn't tell  
6 you how close the equipment was to the window.  
7 But I know that while we were standing in front  
8 of the establishment the window appeared, at  
9 least that portion of the window appeared to be  
10 wide open.

11           MR. BIANCO: I'm going to -- all  
12 right, one of the documents that I showed you I'm  
13 going to mark as L1 for the purpose asking you  
14 some questions about it, and I'll mark that as  
15 L1.

16           (Whereupon, the document referred to  
17 was marked as Licensee Exhibit 1 for  
18 identification.)

19           MR. BIANCO: I'm just going to point  
20 out to you which ones we're going to mark so --

21           MR. RIVERO: This one? That's the  
22 one.

1 MR. BIANCO: Your Honor, I'm just  
2 going to write a 1 on, Licensee 1. And I have  
3 some copies for the Board as well.

4 BY MR. BIANCO:

5 Q Now, Mr. Jones, I will represent to  
6 you that this is a photograph that was not taken  
7 by you on the evening in question. However, the  
8 specific question I have for you is the picture  
9 in L1, does that fairly accurately how far the  
10 window was open on the evening in question?

11 A No, sir.

12 Q And I'm going to now direct your  
13 attention to the other picture which you have.  
14 We're going to mark that as L2.

15 (Whereupon, the document referred to  
16 was marked as Licensee Exhibit 1 for  
17 identification.)

18 MR. BIANCO: And I have some copies  
19 for the Board as well.

20 MR. RIVERO: One moment, please.

21 CHAIRMAN MILLER: Yes?

22 (Off-microphone conversation)

1 MR. BIANCO: All right. Okay.

2 CHAIRMAN MILLER: Okay?

3 MR. BIANCO: Yes, we're okay.

4 CHAIRMAN MILLER: All right, good.

5 BY MR. BIANCO:

6 Q Directing your attention to what we've  
7 marked as L2, in your experience visiting this  
8 particular establishment do you recognize L2 as  
9 an accurate depiction of how it looks when both  
10 windows are completely open?

11 A Yes, sir.

12 Q I'm sorry, my client corrected me.  
13 There's four windows. That's how it looks when  
14 all four windows are open.

15 A Mm-hmm, all four are open, yes. Yes.

16 Q Okay, great. Thank you.

17 (Off-microphone discussion)

18 MR. BIANCO: Okay, we don't have  
19 anything further. We're going to reserve the two  
20 exhibits that we've shown this witness. I have  
21 someone who's going to authenticate them. We're  
22 going to move to admit them at that time which is

1 actually the subject of the brief discussion that  
2 I had with counsel.

3 CHAIRMAN MILLER: Okay.

4 MR. BIANCO: Thank you.

5 CHAIRMAN MILLER: Good. All right.  
6 Board questions? Mr. Alberti.

7 MEMBER ALBERTI: Good morning, Mr.  
8 Jones.

9 THE WITNESS: Good morning, sir.

10 MEMBER ALBERTI: I'm going to  
11 hopefully make this very quick. So let's go to  
12 Exhibit 1 of your report.

13 THE WITNESS: Yes, sir.

14 MEMBER ALBERTI: Okay. Can you  
15 identify for me which of those window panes was  
16 open? I see the front of the building there.  
17 Can you identify or describe for me which window  
18 was open?

19 THE WITNESS: The window pane that was  
20 open is the window that is directly to the left  
21 of the post in the middle of the front level.

22 MEMBER ALBERTI: Okay, great. That

1 post is right underneath the Rent sign, right?

2 THE WITNESS: Yes, sir.

3 MEMBER ALBERTI: Okay, great. And the  
4 sidewalk café, is it directly in front of that  
5 window?

6 THE WITNESS: Yes, sir.

7 MEMBER ALBERTI: Is it approximately  
8 centered on where that -- is that window  
9 approximately centered on the sidewalk café?

10 THE WITNESS: The four windows are  
11 pretty much centered on that, so that whole  
12 opening.

13 MEMBER ALBERTI: Okay, so the four  
14 windows are centered.

15 THE WITNESS: Yes, sir.

16 MEMBER ALBERTI: So I can judge where  
17 that is.

18 THE WITNESS: Yes, sir.

19 MEMBER ALBERTI: Okay. Was the  
20 sidewalk café occupied when, during your visit?

21 THE WITNESS: There were a couple of  
22 people that were sitting there.

1 MEMBER ALBERTI: All right, so it was  
2 occupied?

3 THE WITNESS: Yes.

4 MEMBER ALBERTI: Okay. Now turning to  
5 Exhibit 2 of your report --

6 THE WITNESS: Yes, sir.

7 MEMBER ALBERTI: -- I see you have a  
8 piece of equipment in that, that I can see  
9 through the window, that was, that you report as  
10 open.

11 THE WITNESS: Yes, sir.

12 MEMBER ALBERTI: So the window swings  
13 in? Is that correct? The window frame swings  
14 in? Am I correct on that?

15 THE WITNESS: That's what it appears  
16 to be from what was just explained to me as far  
17 as  
18 how the windows fold.

19 MEMBER ALBERTI: How close was that  
20 piece of equipment to the edge of the window? To  
21 the outside and to the edge of the window?

22 THE WITNESS: And, again, I didn't go

1       inside. But from where I was standing, from that  
2       vantage point, I would say probably the equipment  
3       was probably no further than two or three feet if  
4       that.

5               MEMBER ALBERTI: All right. So where  
6       is the window -- would it impede the window from  
7       opening all the way?

8               THE WITNESS: Again, I couldn't -- I  
9       can't answer that because I didn't go inside.

10              MEMBER ALBERTI: Okay, very good.  
11       Very good.

12              THE WITNESS: But I will tell you what  
13       I observed was --

14              MEMBER ALBERTI: And, sir --

15              THE WITNESS: -- the window was open.  
16       It was wide open.

17              MEMBER ALBERTI: Okay. By "wide open"  
18       be more specific.

19              THE WITNESS: Meaning it was folded  
20       all the way in.

21              MEMBER ALBERTI: Okay, it was folded  
22       all the way in?

1 THE WITNESS: Yes, sir.

2 MEMBER ALBERTI: Okay. Great. I have  
3 no further questions. Thank you.

4 CHAIRMAN MILLER: Okay. Others? All  
5 right, I just have one or two, basically. You  
6 said you were there as a result of the Noise Task  
7 Force.

8 THE WITNESS: Yes, ma'am.

9 CHAIRMAN MILLER: Right? Well when  
10 was the decision to visit this establishment made  
11 by the Noise Task Force? Earlier in the day or -  
12 - when was it made? Do you know?

13 THE WITNESS: When we come in for the  
14 night shift at 7:30 --

15 CHAIRMAN MILLER: Okay.

16 THE WITNESS: -- the supervisor, at  
17 that time, devises the listing of establishments  
18 that need to be monitored for that evening. And  
19 so we do a briefing at 10 o'clock and then that's  
20 when the list is distributed.

21 CHAIRMAN MILLER: Okay, so it's  
22 decided usually at 7:30. And the briefing is at

1 10:00 and then you go out?

2 THE WITNESS: Well, it's decided by  
3 the supervisor between that time and 10 o'clock.

4 CHAIRMAN MILLER: Oh, okay.

5 THE WITNESS: And then it's  
6 distributed out to the task force members at the  
7 briefing.

8 CHAIRMAN MILLER: And is it adjusted  
9 sometimes if there are noise complaints?

10 THE WITNESS: Yeah, it -- sometimes  
11 the listing is the same. Sometimes, you know, it  
12 all depends on what the complaints may have come  
13 in throughout that week or throughout the  
14 previous week. If there are establishments that  
15 have habitually been going against the noise  
16 codes then they kind of stay on the listings. So  
17 it all depends on, you know, those types of  
18 things.

19 CHAIRMAN MILLER: Okay.

20 THE WITNESS: A lot of it is driven  
21 behind the complaints though from citizens.

22 CHAIRMAN MILLER: So -- now I thought

1 I heard you say that this establishment was on  
2 the list because there had been a complaint from  
3 a neighbor or neighbors or --

4 THE WITNESS: Yeah, it was the  
5 complaints from neighbors that, from what I  
6 understand, reside behind the establishment.

7 CHAIRMAN MILLER: Okay, was it  
8 specifically, do you recall what the nature of  
9 the complaints were?

10 THE WITNESS: I can't. I couldn't  
11 tell you. I know that it was regarding loud  
12 music. That's all I could say.

13 CHAIRMAN MILLER: It was regarding  
14 loud music?

15 THE WITNESS: Yes, ma'am.

16 CHAIRMAN MILLER: Okay. And was it  
17 like one incident or more than one incident?

18 THE WITNESS: That's not listed on the  
19 monitoring. It's just a general synopsis. It'll  
20 just say, you know, complaint of loud bass or  
21 complaint, you know, residents complained of  
22 being able to hear the music in their homes or

1 patrons unruly, those types of things.

2 CHAIRMAN MILLER: Right.

3 THE WITNESS: So it's just a general  
4 thing.

5 CHAIRMAN MILLER: So --

6 THE WITNESS: And then we go out to  
7 check it out.

8 CHAIRMAN MILLER: Okay, so my question,  
9 I guess, is in this particular case was it, was  
10 there a noise complaint that you responded to and  
11 therefore you found that the window was open or  
12 was there a noise complaint in general from a  
13 previous time that prompted you all to go out  
14 there?

15 THE WITNESS: Well, we -- there was a  
16 complaint on the list from an establishment that  
17 was on the lower end of 18th Street.

18 CHAIRMAN MILLER: Mm-hmm.

19 THE WITNESS: So and on Friday nights  
20 and Saturday nights, because it gets extremely  
21 busy as far as patron traffic and as far as  
22 vehicular traffic, a lot of times if you go in

1       that area and it's late at night you're stuck in  
2       that traffic.

3               So it's not like I could turn around and go  
4       back the other way. So it's kind of like I'm on  
5       18th Street now and I'm just kind of going along  
6       at one mile an hour trying to get through the  
7       traffic. And that's how I -- and they were  
8       already on the listing, as I said. Because I  
9       could have come a little earlier when there was  
10      less traffic but I got stuck in the traffic.

11              So my intention at that time was just  
12      to check the establishment that was at the lower  
13      end and try to turn around and come back on the  
14      top end of 18th Street. That didn't work out.  
15      So that's how I ended up in front of Madam's  
16      Organ at that time.

17              CHAIRMAN MILLER: Okay.

18              THE WITNESS: If you understand what  
19      I'm trying to say.

20              CHAIRMAN MILLER: Well, it sounds like  
21      you were intending to do the establishments down  
22      at the bottom of 18th Street but you also said

1       that they were on the list to --

2               THE WITNESS:  They were on the list as  
3       well.  My intention was to try to get out of  
4       traffic, turn around and come back around to try  
5       to get to the top of 18th Street and come back  
6       down, versus me having to sit in traffic and try  
7       to go up.  It's a little bit quicker for me to  
8       come down than to go up for some reason.

9               CHAIRMAN MILLER:  Okay.

10              THE WITNESS:  But that didn't work.  
11       I got stuck in traffic so I -- that's how I ended  
12       up --

13              CHAIRMAN MILLER:  Well, so when you  
14       were at Madam's Organ were you there with the  
15       other members of the Noise Task Force?

16              THE WITNESS:  Yes.

17              CHAIRMAN MILLER:  Okay.  Did you hear  
18       noise from other establishments while you were in  
19       front of Adams Morgan (sic).

20              THE WITNESS:  I mean, there -- it's a  
21       club zone.  I mean, it's noise from every  
22       establishment.  So this wasn't, you know -- and,

1 again, I don't make the listing. I'm not picking  
2 on anybody. This is just, this is what it was,  
3 and this is what I overheard when we came to the  
4 establishment. But, yes, there are, there's  
5 noise that comes from a lot of the establishments  
6 at the area.

7 CHAIRMAN MILLER: Do you have a  
8 question?

9 MEMBER JONES: Yes.

10 CHAIRMAN MILLER: All right, I'll  
11 pause. Mr. Jones has a question.

12 MEMBER JONES: Mr. Jones, when you  
13 discovered that the window was open, tell me  
14 about the cooperation that the establishment gave  
15 you as soon as you reported it. Was there  
16 cooperation for rectifying this?

17 THE WITNESS: Yes. Again, while we  
18 were standing there there was an employee from  
19 the establishment who immediately came over. He  
20 identified himself, very kind. And then I asked  
21 for the ABC manager. He immediately went to go  
22 get the ABC manager, Mr. Wilcox. He immediately

1       came out. Everything that I asked for he brought  
2       it right out to me. I mean, so there's really  
3       nothing else I could say about that. I mean,  
4       they were accommodating and everything that we  
5       asked they provided.

6               MEMBER JONES: Okay, thank you so  
7       much.

8               THE WITNESS: Yes, sir.

9               CHAIRMAN MILLER: Any other questions?

10              I had a brief question.

11              CHAIRMAN MILLER: Okay. Mr. Alberti.

12              MEMBER ALBERTI: I'm sorry, I didn't  
13       finish my -- I had this question in earlier. Mr.  
14       Jones, did you watch Mr. Wilcox close the window?

15              THE WITNESS: Yes, sir.

16              MEMBER ALBERTI: Okay, so you saw him  
17       --

18              THE WITNESS: Well, I saw the window  
19       being closed. I should say that.

20              MEMBER ALBERTI: Okay, so you don't  
21       know --

22              THE WITNESS: So I'm assuming that --

1 MEMBER ALBERTI: So you don't know  
2 what he had to -- what steps he had to take to  
3 close the window?

4 THE WITNESS: No.

5 MEMBER ALBERTI: Okay, thank you.

6 THE WITNESS: No.

7 MEMBER ALBERTI: No further questions.

8 CHAIRMAN MILLER: Any others? I have  
9 one other. When you go out with this task force  
10 do you then, do you check whether the sound can  
11 be heard at any residential area?

12 THE WITNESS: Yes, we do. If the --  
13 well, this -- if the complaint deems that they  
14 want us to visit the establishment -- excuse me,  
15 the residence, then we do it. A lot of times we  
16 get complaints but they don't want us to come  
17 into the home.

18 CHAIRMAN MILLER: Right.

19 THE WITNESS: So it all depends. But,  
20 yes, we do that on quite a few occasions.

21 CHAIRMAN MILLER: And did you do that  
22 on this occasion?

1 THE WITNESS: No, because there was no  
2 -- the complaint was anonymous.

3 CHAIRMAN MILLER: Okay.

4 MR. RIVERO: Mm-hmm.

5 CHAIRMAN MILLER: All right. Thank  
6 you. Anything else?

7 MEMBER SILVERSTEIN: One question.

8 CHAIRMAN MILLER: Oh, Mr. Silverstein.

9 MEMBER SILVERSTEIN: Yes, thank you,  
10 Mr. Jones.

11 THE WITNESS: Yes, sir.

12 MEMBER SILVERSTEIN: Let's break this  
13 down to its very most elementary and simple  
14 matter. You were there with the Noise Task  
15 Force. Correct?

16 THE WITNESS: Yes, sir.

17 MEMBER SILVERSTEIN: Why was the Noise  
18 Task Force created?

19 THE WITNESS: The Noise Task Force was  
20 created, from what I understand, by the mayor's  
21 office because we have so many establishments  
22 that have popped up recently, within the last

1 year or so, that have either rooftop, sidewalk  
2 cafes, have gained entertainment endorsements and  
3 have really done a lot of things differently than  
4 they have in the past. So a lot of noise comes  
5 from a lot of the establishments that are within  
6 the District.

7 So this Noise Task Force -- and complaints  
8 that we get from residents have really boosted  
9 this whole task force thing. So this is why this  
10 task force was created because we get so many  
11 complaints to -- from residents.

12 MEMBER SILVERSTEIN: Would it be fair  
13 to say to create a balance between the needs of  
14 licensed establishments to have lively  
15 entertainment and people who live in those areas  
16 to have peace, order and quiet to the extent that  
17 their neighborhood can be both lively and  
18 liveable?

19 THE WITNESS: It was created to -- for  
20 both entities to coexist together.

21 MEMBER SILVERSTEIN: This particular  
22 establishment has a settlement agreement?

1 THE WITNESS: Yes, sir.

2 MEMBER SILVERSTEIN: And the  
3 settlement agreement says that windows cannot be  
4 left open while music is being, while there's  
5 live entertainment?

6 THE WITNESS: Yes, sir.

7 MEMBER SILVERSTEIN: Was there live  
8 entertainment at the time?

9 THE WITNESS: Yes, sir.

10 MEMBER SILVERSTEIN: So it was a  
11 violation of the agreement that are entrusted to  
12 follow?

13 MR. RIVERO: I'm going to object to  
14 that question, unfortunately.

15 MEMBER SILVERSTEIN: -- you're saying?

16 MR. RIVERO: I regret I have to object  
17 to that question.

18 CHAIRMAN MILLER: All right, let's  
19 hear your objection then.

20 MR. RIVERO: The question is asking  
21 the witness for a legal conclusion.

22 MEMBER SILVERSTEIN: Okay.

1 MR. RIVERO: And the witness is only  
2 here to state factually what he or she observed.

3 MEMBER SILVERSTEIN: Did you -

4 CHAIRMAN MILLER: Okay.

5 MEMBER SILVERSTEIN: You saw the  
6 volunteer agreement -- settlement agreement that  
7 said windows were not to be open while music was  
8 being played. Correct?

9 THE WITNESS: Yes, sir.

10 MEMBER SILVERSTEIN: Music was being  
11 played. Correct?

12 THE WITNESS: Yes, sir.

13 MEMBER SILVERSTEIN: That's all I need  
14 to know. Thank you.

15 CHAIRMAN MILLER: Okay, Mr. Rodriguez?

16 MEMBER RODRIGUEZ: Mr. Jones, you've  
17 already established that there was cooperation  
18 from Madam's Organ when you pointed out  
19 discrepancy?

20 THE WITNESS: Yes, sir.

21 MEMBER RODRIGUEZ: Okay. Now also,  
22 the window, can you tell me -- the window, does

1       it front -- what does the window there -- are  
2       there any tenants or renters or that front that  
3       window?

4               THE WITNESS: No, not that I know of.

5               MEMBER RODRIGUEZ: What fronts that  
6       window?

7               THE WITNESS: There is a, seating  
8       areas and then you have the public space out to  
9       the street.

10              MEMBER RODRIGUEZ: Public space?

11              THE WITNESS: Yes, sir.

12              MEMBER RODRIGUEZ: All right. So  
13       there are no homes or any inhabitants across --

14              THE WITNESS: No, sir.

15              MEMBER RODRIGUEZ: -- that fronts it?  
16       Okay. Thank you.

17              CHAIRMAN MILLER: Okay. Others? All  
18       right, any other questions on Board questions?  
19       Yes.

20              MR. BIANCO: I do have a couple.  
21       Sounds like Mr. Rivero does too, so he can go  
22       first.

1 CHAIRMAN MILLER: Okay, Mr. Rivero.

2 MR. RIVERO: Thank you.

3 CHAIRMAN MILLER: Okay.

4 MR. RIVERO: Based on -- well, I  
5 should hit -- get to redirect.

6 CHAIRMAN MILLER: Right, or redirect.

7 MR. RIVERO: All prior questions.

8 CHAIRMAN MILLER: Yes, you do.

9 MR. RIVERO: Based on your testimony,  
10 you indicated that, when L2 was shown to you, you  
11 agreed that that's what the window looks like  
12 when it's fully open or words to that effect?

13 THE WITNESS: Yes, sir.

14 MR. RIVERO: Okay. My question to you  
15 is have you actually been to the establishment  
16 and observed this or are you just testifying  
17 based on the photograph that's given to you right  
18 now?

19 THE WITNESS: No, I have, while on  
20 18th Street and I've been working, I've noticed  
21 that, I've observed the windows fully open in  
22 that manner.

1 MR. RIVERO: Okay. Now much other  
2 question is have you been involved or were you  
3 part of the process that created the Noise Task  
4 Force? Were you involved in meetings creating  
5 the Noise Task Force?

6 THE WITNESS: Yes, sir.

7 MR. RIVERO: You were?

8 THE WITNESS: Yes, sir.

9 MR. RIVERO: Okay. And so on the basis  
10 of your additional involvement as to your initial  
11 experience, you were talking about what the  
12 purpose of the Noise Task Force is. And my real  
13 question to you is how would you really know what  
14 the purpose is? You indicated that you were  
15 involved in meetings and in organizing this?

16 THE WITNESS: Yes, sir.

17 MR. RIVERO: Okay. Thank you. No  
18 further questions.

19 CHAIRMAN MILLER: Mr. Bianco?

20 MR. BIANCO: Mr. Jones, when you were  
21 standing in front of the establishment you  
22 testified that you heard noise emanating from the

1 establishment.

2 THE WITNESS: Yes, sir.

3 MR. BIANCO: Were you able to  
4 differentiate if the noise was coming from the  
5 inside of the establishment or from the loud  
6 speaker on the exterior of the establishment?

7 THE WITNESS: I was able to determine  
8 that it came from inside of the establishment  
9 because what initially made me stop and look was  
10 I heard live band music. And so once I got onto  
11 the sidewalk I immediately looked over to the  
12 window that open, and there was a band playing,  
13 right there, inside the window.

14 Now, again, if you're saying that if  
15 I heard it coming through the window or out of a  
16 speaker, to be honest with you, I can't tell you  
17 whether it was out of a speaker or through the  
18 window. But I will tell you that the window was  
19 open and there was a band playing.

20 MR. BIANCO: Okay, good. And you also  
21 testified that Mr. Wilcox had the window closed  
22 after you had spoken to him?

1 THE WITNESS: Yes, sir.

2 MR. BIANCO: And did the band stop  
3 playing while the window was closed -- when the  
4 window was deemed closed?

5 THE WITNESS: I believe at that time  
6 Mr. Wilcox told me that the band was going to be  
7 ending its set pretty soon anyway. And I think  
8 that, at that time, once he closed the window, I  
9 think the band had stopped playing. I think the  
10 band was over with at that point.

11 MR. BIANCO: Did you see them moving  
12 any equipment inside to close the window?

13 THE WITNESS: I couldn't recall. I  
14 can't recall.

15 MR. BIANCO: And on the noise  
16 complaint, very briefly, the anonymous noise  
17 complaint that you testified to, did you see  
18 these in a log on such complaints?

19 THE WITNESS: Yes. Yes they do.

20 MR. BIANCO: Did you review that log  
21 in anticipation of your testimony today?

22 THE WITNESS: Again, the information

1       that I get is only on anonymous complaints. So  
2       it's not anything that I could tell you this is  
3       where it came from, this was the address. I  
4       can't give you that information.

5               MR. BIANCO: So you wouldn't be able  
6       to tell us the date that there was a complaint,  
7       the address --

8               THE WITNESS: No, sir.

9               MR. BIANCO: -- of the noise  
10       complaint, none of the items that -- okay, thank  
11       you. I don't have anything further for the  
12       witness.

13              CHAIRMAN MILLER: Okay. I just want  
14       to note, for the record, that board member Short  
15       has arrived. He arrived at 10:27. You know,  
16       whether or not he participates in the  
17       deliberation, I guess, will depend on, I guess,  
18       will depend on letting you read the transcript of  
19       the part you missed. But I want to recognize  
20       that you're here, and we'll see what happens with  
21       that.

22              MEMBER SHORT: Thank you.

1 CHAIRMAN MILLER: But I want to  
2 recognize that you're here. And we'll see what  
3 happens with that.

4 MEMBER SHORT: Thank you.

5 CHAIRMAN MILLER: Okay, Mr. Rivero?

6 MR. RIVERO: Investigator Jones.

7 THE WITNESS: Yes, sir.

8 MR. RIVERO: When you observed the  
9 window open and saw the band and heard the musick  
10 were you standing inside the establishment,  
11 inside a public space or somewhere else?

12 THE WITNESS: We were on public space.

13 MR. RIVERO: What part were --

14 THE WITNESS: Outside.

15 MR. RIVERO: The sidewalk?

16 THE WITNESS: Yes.

17 MR. RIVERO: No further questions.

18 CHAIRMAN MILLER: Okay. Anyone else  
19 here? Thank you, Mr. Jones.

20 THE WITNESS: Thank you.

21 CHAIRMAN MILLER: Okay. Do you have  
22 another witness?

1 MR. RIVERO: No other witnesses.

2 CHAIRMAN MILLER: Okay. Okay, Mr.

3 Bianco.

4 MR. BIANCO: I'd like to open briefly  
5 before we call our witnesses. Members of the  
6 Board, thank you. The testimony that you'll hear  
7 is that my client complies with the settlement  
8 agreement, takes it very seriously and puts  
9 measures in place to ensure that the agreement is  
10 complied with.

11 You'll hear about what measures they  
12 put into place. You'll see a photograph clearly  
13 depicting the, how the window was cracked on the  
14 evening in question. That photo will be  
15 authenticated by witnesses who were on-scene that  
16 evening.

17 My client will testify that they were  
18 operating for 11 years without a voluntary  
19 agreement and will give some background as to the  
20 origin of the provision that is in question here  
21 today. And I think, based on an appropriate  
22 interpretation of that provision and my clients

1 efforts at compliance, you'll find no violations  
2 in this case. So with that we call our first  
3 witness which is Bill Duggan.

4 CHAIRMAN MILLER: Good morning.

5 WHEREUPON,

6 BILL DUGGAN

7 was called as a witness by Counsel for the  
8 Defendant and, having been first duly sworn,  
9 assumed the witness stand, was examined and  
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. BIANCO:

13 Q Mr. Duggan, can you state your name  
14 and spell your last name, for the record, please?

15 A Bill Duggan, D-U-G-G-A-N.

16 Q And, Mr. Duggan, what's your position  
17 with the licensee in this case?

18 A The licensee is -- I'm the President  
19 of 2461 Corporation, the owner of Madam's Organ.

20 Q And are you familiar with the  
21 voluntary agreement governing operations at 2461  
22 Corp?

1           A       I am.

2           Q       And are you specifically familiar with  
3 the provision that we're talking about here today  
4 with regard to opening the windows?

5           A       Absolutely.

6           Q       Okay. And do you have any policies in  
7 place to ensure that particular provision is  
8 complied with?

9           A       We do. We have live music every  
10 night. And we just have it that, rather than get  
11 into the time frames -- I know it says after  
12 12:30 -- we have it that after the first set of  
13 the band, which most bands start between 9:30 and  
14 10:00, they do 70-minute sets. So after the  
15 first set, no matter what the time is, we close  
16 the windows. And that's been going on since we  
17 opened in that location in '97. You know, it's  
18 been going on since then.

19                   And usually I have a manager, whoever  
20 the manager on duty is, it's their responsibility  
21 to double-check. I mean, to make sure the  
22 windows have been closed.

1           Q       And where are the windows situated?  
2       If you're inside of the establishment where are  
3       the windows situated in relation to where the  
4       band plays?

5           A       Directly at the back of the band. The  
6       band's -- I mean, the normal setup for the band  
7       is that usually the drummer of the band's back is  
8       against the wall of the windows.

9           Q       Okay. And are --

10          A       Just because it's a tiny stage.

11          Q       Are you familiar with the band that  
12       was playing on the evening in question?

13          A       Yeah.

14          Q       Which band was it?

15          A       Called Skyla Burrell Band.

16          Q       Okay. And how frequently have they --  
17       had they ever played in your establishment before  
18       that night?

19          A       Yes, they've been playing for me, I  
20       think about eight years or so. They're on a  
21       regular rotation. They play about once every  
22       month and a half or something like that.

1           Q       Okay. And do you make your live music  
2 acts aware of the provisions of the settlement  
3 agreement?

4           A       I would say I make them very aware.

5           Q       And how do you do that?

6           A       Well, I mean, I usually deal with the  
7 head of the band, you know, whoever, like within  
8 this situation with Skyla. But, you know, again,  
9 these people have been playing for me for a long  
10 time. You have, you get a relationship with  
11 them. And most everybody that comes in there  
12 understands, you know, after the first, you know,  
13 or second visit, you know, when they're playing  
14 what the things that we expect out of them are.

15          Q       Okay. And you have a loud speaker on  
16 the exterior of your establishment. Correct?

17          A       Well, actually it was moved by the  
18 Board. It's -- when I did the building back in,  
19 excuse me, '96-'97, the front wall on the  
20 building was actually outside on the other side  
21 of where that bench is in the photographs.

22                   And we wanted to create a situation

1 where we had what looked like a front porch,  
2 trying to make it look like an older saloon or  
3 whatever. So this Board actually ruled many  
4 years ago that that loud speaker is outside of  
5 those windows, but it's actually considered  
6 inside of the establishment because the  
7 establishment's front wall is basically in front  
8 of those benches between there and the sidewalk  
9 café. Q The loud speaker is  
10 specifically addressed in the voluntary.

11 Correct?

12 A Correct. Correct.

13 Q I'm sorry, the settlement agreement.  
14 And it's specifically permitted inside the  
15 building?

16 A Correct.

17 Q Okay. And do you know whether or not  
18 the loud speaker was playing on the evening in  
19 question?

20 A Well, I wasn't there on the night in  
21 question. So I don't --

22 Q So you don't know?

1           A       No, but it's part of the sound system.  
2       It's always connected. If the rears speaker  
3       inside are on the speaker there is on the same  
4       circuit and comes out of the same mixer.

5           Q       And --

6           A       It plays during the live music and  
7       during recorded music.

8           Q       Then that's what I was going to ask.  
9       What does a broadcast while live music is  
10      playing?

11          A       Whatever's played inside. You know,  
12      and, again, it's made to just have that part  
13      continue the music to the bench area.

14          Q       And you've had occasion to stand in  
15      front of your establishment while live music was  
16      playing. Correct?

17          A       Once or twice, yeah.

18          Q       And were you able to distinguish  
19      between noise coming from inside, the loud  
20      speaker and the ambient noise in the  
21      neighborhood?

22          A       Well, of course. Between there and

1 the ambient noise in the neighborhood? I mean, I  
2 -- yes, I can. I mean, I could hear my music,  
3 well, obviously, if I hear it.

4 Q Would you know if it's coming from the  
5 speaker or the inside?

6 A No, it's, again, I know it's always  
7 coming from the speaker because the speaker's on.  
8 But I don't know if it's coming from the inside.  
9 Sorry, I don't know if I understood your  
10 question.

11 Q And in these photos that we've marked  
12 as L1 and L2 do you recognize those photos?

13 A I do.

14 Q And those were not taken on the  
15 evening in question, right?

16 A They were not.

17 Q Okay. Who took those pictures?

18 A I did.

19 Q And did you take those pictures in  
20 consultation with one of your staff?

21 A I took the pictures after we came for  
22 a hearing. The, what's it called?

1           Q       Status.

2           A       The status hearing. And the  
3 individual that was playing that night, the  
4 trumpeter, was with us. So we went back so that  
5 he could explain, you know, where, you know, the  
6 window was, et cetera. And I took the pictures  
7 at that point, took the picture of the one with -  
8 - where he said and, again, I wasn't there --  
9 showing the amount that the window was open. And  
10 then I also had them open the windows, excuse me,  
11 wide open because -- to show what it's like when  
12 the windows are, in fact, open.

13          Q       And if you could explain the origin of  
14 the provision in the settlement agreement with  
15 regard to open windows. I know you wanted to  
16 speak on that particular issue.

17          A       Well, again, going back to when we  
18 were negotiating with the ANC back in, I think it  
19 was '08, 07-'08, I'm not sure to be -- but I was  
20 meeting with Mindy Moretti. And the discussion  
21 at that time -- again, you know, we had been up  
22 there, at that point we had been in that location

1 operating for 11 years, I think, at the point  
2 that we were there 10 or 11 years.

3 And they were saying that they wanted  
4 to keep it, you know, afterwards they said it's  
5 fine. You know, you're going to hear the music.  
6 In fact, the windows are allowed to be open when  
7 the band's off the stage. You know, if the band  
8 goes on break at 12:30, at 1:30 the windows are  
9 allowed to be open until the close of business.

10 But we did agree that we would close  
11 the windows. And, again, with more like the  
12 understanding that, again, the picture that you  
13 see with the windows wide open, that's how we  
14 have the windows when the band is on there.  
15 Again, it was done sort of to make it like sort  
16 of a New Orleans feel.

17 But I did agree with her that we would  
18 close them at 12:30. But, as I said, usually,  
19 rather than get into the back and forth as to  
20 whether, you know, what time it is, we just made  
21 it a rule with everybody that at the end of the  
22 first set, before the second set begins, the

1 windows are to be closed.

2 And it's actually because of how small  
3 the stage is, it's actually a fairly involved  
4 thing to close the windows because you've got to,  
5 usually you have to move the drum set, move the  
6 cymbals, et cetera, to swing -- because the  
7 windows do swing in. They have to swing around  
8 and close them at that point, so.

9 Q How long is that process you're  
10 talking about?

11 A Well, it shouldn't take more than a  
12 couple minutes but, again, depending on --  
13 there's drums, there's you know, it depends on  
14 the band.

15 Q But it's not like --

16 A I mean, the other night we had a  
17 seven-piece band that we had to move a lot of  
18 equipment.

19 Q But it's not a matter of simply  
20 walking over and pushing the window closed. Some  
21 equipment has to be moved.

22 A No, no, it's -- again, we have to

1 swing -- they're folded all the way across. It's  
2 about an 8-foot opening.

3 Q Okay. A

4 Or 10 feet. I'm not sure.

5 Q Are there any other issues with this  
6 particular violation that you would like to  
7 address to the Board?

8 A No, it's just, again, I go back to the  
9 neighborhood. And in fact, I saw Mindy Moretti,  
10 the one from the Agency at the time, and  
11 mentioned it and, you know, she just rolled her  
12 eyes. It's, I think the comment was like, you  
13 know, the window being open that little bit as  
14 opposed to what we had talked about with it said,  
15 like, you know, you see somebody with their fly  
16 down a little bit and you might tell them, oh,  
17 you're fly's down. You don't try to get them  
18 arrested for indecent exposure.

19 You know, it's like this is not --  
20 these were -- this is not what we would think of  
21 as windows being open by any stretch. It's just  
22 not, and they said the spirit, and I believe the

1 letter wrote of the agreement has been followed  
2 since we've had this agreement.

3 Q Very good.

4 MR. BIANCO: I would move for  
5 admission of L1 and L2.

6 CHAIRMAN MILLER: Is there an  
7 objection?

8 MR. BIANCO: I will withdraw my  
9 request to move the exhibits at this time. I'm  
10 going to move them in with another witness.

11 CHAIRMAN MILLER: Okay. Cross?

12 MR. RIVERO: Thank you.

13 CHAIRMAN MILLER: Mm-hmm.

14 CROSS-EXAMINATION

15 BY MR. RIVERO:

16 Q Mr. Duggan, you testified that you  
17 were --

18 A Duggan.

19 Q Mr. Duggan, you testified that you  
20 were not at the establishment on the night of  
21 this incident. Is that correct?

22 A Correct.

1           Q       Okay. But eventually you found out  
2       that this happened. Someone told you. When were  
3       you informed about the incident?

4           A       I would think probably the next day or  
5       later that night. I just am not sure. I mean,  
6       I'm in constant contact with Carlos.

7           Q       But you were then in the District of  
8       Columbia?

9           A       You know, I don't know where I was  
10      yesterday let alone that night. I just, I  
11      really, I mean, I just don't know.

12          Q       You don't know.

13          A       I mean, because I didn't there was a  
14      violation until much afterwards. But if ABC does  
15      a -- any time I have a visit from ABC or any  
16      incident that happens at Madam's Organ, I'm  
17      informed of it, you know, pretty quickly. And  
18      that's whether I'm in Costa Rica or Brazil or  
19      anywhere.

20          Q       Okay.

21          A       They'll email me or get in touch with  
22      me right away.

1 Q Okay. Who informed you?

2 A Carlos Wilcox, my general manager.

3 Q Thank you.

4 MR. RIVERO: No further questions.

5 CHAIRMAN MILLER: Okay. Board

6 questions?

7 MEMBER ALBERTI: No.

8 CHAIRMAN MILLER: Yes, Mr. Rodriguez?

9 MEMBER RODRIGUEZ: Yes, Mr. Duggan,  
10 good morning.

11 THE WITNESS: Good morning.

12 MEMBER RODRIGUEZ: As far as the window  
13 being slightly open, as you testified, would you  
14 say that that was something that the band did or  
15 management did?

16 THE WITNESS: Well, I know from --  
17 I'll let him testify. I mean, I wasn't there  
18 that night. But that was my understanding. But  
19 I know my management will also testify that they  
20 went through all the steps to close it after the  
21 first set.

22 MR. RIVERO: I'm going to have to

1 object to the question.

2 MEMBER RODRIGUEZ: Okay.

3 THE WITNESS: But not the answer?

4 CHAIRMAN MILLER: Is there -- you're  
5 not asking for --

6 MR. RIVERO: I'm trying to give as  
7 much latitude as possible because the witness  
8 testified that he wasn't there. And the question  
9 is do you think, that evening, one person or  
10 another did it, and the witness wasn't there. The  
11 witness testified he wasn't there. So perhaps  
12 the question could be levied to someone else.

13 CHAIRMAN MILLER: Right. And I think  
14 Mr. --

15 MEMBER RODRIGUEZ: I withdraw the  
16 question.

CHAIRMAN MILLER: -- Duggan  
17 said that.

18 MEMBER RODRIGUEZ: That's fine. I  
19 withdraw the question.

20 CHAIRMAN MILLER: Okay. All right,  
21 others? I have a question about the loud  
22 speaker. I don't think I totally followed you

1 and I want to -- I'm looking at Exhibit 1 which  
2 is the Government's Exhibit 1 attached to the  
3 case report. It's just a picture of the outside  
4 of Madam's Organ.

5 THE WITNESS: Correct.

6 CHAIRMAN MILLER: I thought maybe we  
7 would use that picture since this one isn't  
8 evidence. So if you can, if this is helpful. I  
9 don't know. You were explaining something about  
10 the loud speaker being on the outside of the  
11 wall?

12 THE WITNESS: It's -- all right, so  
13 you see the windows in this picture. You've got  
14 the windows in the wall and the doors.

15 CHAIRMAN MILLER: Right.

16 THE WITNESS: There's actually another  
17 wall that's about four feet in front of there.

18 CHAIRMAN MILLER: Okay.

19 THE WITNESS: That was the actual wall  
20 of the building when I got it back in '96. And  
21 so we built this porch area between that wall and  
22 the front windows. And there's a bench, you

1 know, for seating, et cetera, there. The loud  
2 speaker, if you're looking at the picture --

3 CHAIRMAN MILLER: Maybe --

4 THE WITNESS: Can we just call it  
5 speaker, not loud?

6 CHAIRMAN MILLER: Maybe we can look at  
7 -- what? You think your --

8 THE WITNESS: The speaker's just to  
9 the right of -- all the way to the right where,  
10 you see that round thing over to the right-hand  
11 side in that picture?

12 MR. BIANCO: Right.

13 CHAIRMAN MILLER: The round thing is  
14 normal?

15 THE WITNESS: That's actually a light  
16 that says when the roof deck is open. But --

17 CHAIRMAN MILLER: Okay.

18 THE WITNESS: -- the speaker is  
19 literally behind there.

20 CHAIRMAN MILLER: Okay, let's look at  
21 the next exhibit, Exhibit 2 where there are  
22 people sitting on this porch, right?

1 THE WITNESS: Okay.

2 CHAIRMAN MILLER: Okay, there is --  
3 where is the --

4 THE WITNESS: You won't see it in the  
5 picture. It's just to the right of where that,  
6 the light that's over there to the right-hand  
7 side in that picture.

8 CHAIRMAN MILLER: Okay, so it's on  
9 that wall that the lamp was on?

10 THE WITNESS: It sits -- it actually  
11 sits on the south wall and faces in towards the -  
12 - it faces north, so it faces towards the bench  
13 and towards the front door.

14 CHAIRMAN MILLER: Is it what we would  
15 consider to be the outside?

16 THE WITNESS: well, that's what I'm  
17 saying. It's outside of the windows, inside of  
18 the wall. But it actually is, you know, it's --  
19 there's no wall, there's no windows between that  
20 speaker and the sidewalk.

21 CHAIRMAN MILLER: Okay. So does that  
22 speaker emit sound from the live bands?

1 THE WITNESS: Yes.

2 CHAIRMAN MILLER: So if you're hearing  
3 live band music out there you could be hearing it  
4 either from the speakers or through the open  
5 window?

6 THE WITNESS: Correct.

7 CHAIRMAN MILLER: Okay. And there was  
8 nothing in the settlement agreement that  
9 prohibits the speaker being -- music being played  
10 through the speaker after 12:30?

11 THE WITNESS: No, in fact, there's --  
12 specifically says that it's open -- it's taken  
13 out, that there's an understanding that that  
14 speaker doe play at that time.

15 CHAIRMAN MILLER: Oh, right. Okay.  
16 And is it your testimony -- it sounded like it is  
17 -- that when the ANC negotiated the settlement  
18 agreement that the intent was that the windows  
19 not be open all the way as opposed to a partial  
20 opening?

21 THE WITNESS: Correct, when -- you  
22 know, again, and there were times, we're going

1 back a lot of years, where, you know, we would  
2 have the windows that you see would be open all  
3 the way. And when the band was playing, you  
4 know, we would close them as the night got later,  
5 excuse me. But there was no specific time.

6 And so, with the ANC, we decided, that  
7 took on that 12:30 time thing. As I said, the --  
8 I will say it wasn't my intent at the time that,  
9 you know, it meant, you know, a window being  
10 cracked upon. I believe the picture shows what  
11 is was like when the windows are open. And it  
12 specifically says the windows because, you know,  
13 they're a whole series there.

14 I don't think it was intended that  
15 something inadvertently cracked open, that, you  
16 know, we were playing cat mouse. I mean, I have a  
17 pretty good relationship over the years.

18 CHAIRMAN MILLER: Okay, so even though  
19 that's your understanding of the intent  
20 throughout all the years of this settlement  
21 agreement being in existence you do instruct the  
22 manager and the entertainment to close it all

1 way?

2 THE WITNESS: Correct. I have the --  
3 obviously if the manager is -- you know, the  
4 other people may close it but the manager's  
5 always to double-check that it, in fact, is done.

6 CHAIRMAN MILLER: Okay.

7 THE WITNESS: So I'm not sure who  
8 always does it. Oftentimes, I said, because the  
9 band has to move equipment they'll usually want  
10 to be the ones that are doing it. They don't  
11 want anybody messing with their drum kits, et  
12 cetera.

13 CHAIRMAN MILLER: To your knowledge  
14 did you receive any complaints that night about  
15 the window being open and live music being heard?

16 THE WITNESS: Well, again, I wasn't  
17 there.

18 CHAIRMAN MILLER: You weren't there.

19 THE WITNESS: I wasn't there so I  
20 apologize.

21 CHAIRMAN MILLER: Okay. All right.

22 Okay, no further questions. Yes, Mr. Short.

1 MEMBER SHORT: Good morning, Mr.  
2 Duggan.

3 THE WITNESS: Good morning.

4 MEMBER SHORT: The settlement  
5 agreement that I'm looking at under Section 4,  
6 Noise, Music and Dancing --

7 THE WITNESS: Okay.

8 MEMBER SHORT: And then on the last  
9 page is has where you signed it. Is that  
10 correct?

11 THE WITNESS: Correct.

12 MEMBER SHORT: And you stated that you  
13 understood and you agreed upon everything that  
14 was in this settlement agreement.

15 THE WITNESS: And I absolutely do.

16 MEMBER SHORT: You do?

17 THE WITNESS: Correct.

18 MEMBER SHORT: Okay, so on the night  
19 in question, even though you weren't there, since  
20 you are the owner, you're responsible to make  
21 sure that this settlement agreement is complied  
22 with?

1 THE WITNESS: Absolutely.

2 MEMBER SHORT: And it was not.

3 THE WITNESS: It was complied with. As  
4 I said, I negotiated the settlement agreement.  
5 It says the windows shall be closed. Again,  
6 those windows were all closed. One window  
7 apparently, from my understanding, was cracked  
8 open. And I think you'll get testimony as to how  
9 that happened.

10  
11 But, as I said, the windows, the  
12 agreement that I have with the ANC is very  
13 specific about that big wide open are, okay.  
14 And, again, I was part of the negotiations and I  
15 know exactly what both was written -- and that's  
16 why it says the windows -- and the intent.

17 MEMBER SHORT: Mr. Duggan, was there  
18 noise being heard --

19 THE WITNESS: I wasn't at the  
20 establishment.

21 MEMBER SHORT: So you wouldn't know?

22 THE WITNESS: I don't think we're here

1 for noise, number one. We're not here for a  
2 noise violation.

3 MEMBER SHORT: Why are we here -- you  
4 understand?

5 THE WITNESS: It says because the  
6 window was open. There's no noise complaint  
7 whatsoever, as far as I know. The complaint that  
8 I was served with says nothing about noise. And  
9 we're not here for a noise complain.

10 MEMBER SHORT: I mean, that's --

11 THE WITNESS: And there was no  
12 indication that night that we were in violation  
13 of a noise ordinance.

14 MEMBER SHORT: Okay. Forgive me, Mr.  
15 Duggan, but --

16 THE WITNESS: Duggan, pleas.

17 MEMBER SHORT: I think that I've read,  
18 and I just heard when I came in late, and forgive  
19 me for that, that the investigator said he stood  
20 on 18th Street, looking through your window and  
21 saw a live band playing.

22 THE WITNESS: Yes, I don't think

1       that's a mistake.

2                   MEMBER SHORT:   That's all I have,  
3       Madame Chair.

4                   CHAIRMAN MILLER:   Okay.   Others?   Mr.  
5       Alberti?

6                   MEMBER ALBERTI:   No, I have questions.

7                   CHAIRMAN MILLER:   Okay.   Any questions  
8       on Board questions?

9                   MR. RIVERO:   I don't have anything.

10                  CHAIRMAN MILLER:   All right,   thank  
11       you.       MR. BIANCO:   Our next witness is

12       Carlos Wilcox.

13                  CHAIRMAN MILLER:   Good morning.

14                  MR. WILCOX:   Good morning.

15       WHEREUPON,

16                               CARLOS WILCOX

17       was called as a witness by Counsel for the  
18       Defendant and, having been first duly sworn,  
19       assumed the witness stand, was examined and  
20       testified as follows:

21       DIRECT EXAMINATION

22                   BY MR. BIANCO:

1 Q Please state your name and spell your  
2 last name for the record, please.

3 A Carlos Wilcox, W-I-L-C-O-X.

4 Q Where do you work, Mr. Wilcox?

5 A Madam's Organ.

6 Q And what's your job?

7 A General manager.

8 Q And were you working on the evening  
9 that's at issue here today?

10 A I was.

11 Q I believe it was the 22nd of June.

12 A I was working.

13 Q Okay. And what was your shift that  
14 night?

15 A From 5 p.m. to 5 a.m.

16 Q Okay. And you're familiar with the  
17 operations of the establishment, obviously.

18 A Correct.

19 Q And are you familiar with the  
20 settlement agreement that the establishment's  
21 entered into with the ANC?

22 A I am.

1           Q       And, specifically are you familiar  
2 with the noise provisions regarding, and the  
3 provision regarding these?

4           A       Yes, I am.

5           Q       Okay, and as the general manager is  
6 there any policy with regard to the windows that  
7 you employ?

8           A       Yes, I do.

9           Q       And can you describe what that is?

10          A       The band starts at 10 p.m. and they  
11 play a 70-minute set which would get them off the  
12 stage around 11:00, 11:15, 11:20. Some people  
13 might go until 11:30. When that set is over we  
14 immediately close the windows and that way there  
15 is no disruption of, you know, us trying to close  
16 the windows once the band goes back on stage.

17          Q       Okay. And I believe you have in front  
18 of you what is marked as L No. 2. It's a  
19 photograph.

20          A       I do.

21          Q       Okay. And is that what the windows  
22 look like when they're fully open?

1           A       Yes, it is.

2           Q       And in order to go from the windows  
3       that are fully open to closing them all, do you  
4       have to do anything with regard to the band's  
5       equipment?

6           A       As far as closing -- we would, if we  
7       had them fully open it would be a big process  
8       because there's drums and then also, like Mr.  
9       Duggan just said, it depends on the size of the  
10      band. If it was a really big band you've got to  
11      move equipment out of the way. So that's why we  
12      try to do it when they're on break, when they  
13      take that first break, so that we're not  
14      disrupting the band from playing. Because  
15      there's no way we could go from fully open to  
16      closed while the band is playing.

17          Q       Okay. And how about in this particular  
18      case, with this band on June 22nd? Did you have  
19      to move equipment in order to have the windows  
20      closed?

21          A       I personally closed the windows on  
22      that first break. So I know, I think he had like

1 a piece of drum or something, drum equipment in  
2 the way. So I closed the windows during that  
3 first break that night.

4 Q Okay. And if I could direct your  
5 attention -- I'm sorry. Strike that.

6 Did you at some point in the evening  
7 become aware that there was an ABRA inspector on  
8 the premises?

9 A I did.

10 Q And how did you become aware of that?

11 A One of my security came inside and got  
12 me.

13 Q Okay, and did you have a -- was that  
14 Inspector Jones who testified here today?

15 A It was.

16 Q And you came outside to meet him?

17 A Yes, I did.

18 Q Okay, And you had a conversation with  
19 him at that point.

20 A We did.

21 Q And what did that conversation consist  
22 of?

1           A       The first thing said was that the  
2 windows were open. And then he asked me for --  
3 he introduced himself and then said he was from  
4 the, what is it, noise? What is it called?  
5 Noise Ordinance.

6           Q       Noise Task Force.

7           A       Noise Task Force Committee, some  
8 committee. It's a lot of committees in the city.  
9 So he introduced himself. He asked me for our  
10 license, my manager's license, voluntary  
11 agreement and I think that was it. So I went  
12 inside and go everything that he asked me for.

13          Q       Okay. And at the time he informed you  
14 that your windows were open did you look at them  
15 to verify?

16          A       I did.

17          Q       Okay, and did you see how much they  
18 were open?

19          A       I did.

20          Q       And, directing your attention to wha's  
21 marked as L NO. 1 -- do you see what I'm talking  
22 about?

1           A       I do see it.

2           Q       Does that fairly and accurately depict  
3 how much the window was open on the evening in  
4 question?

5           A       From my recollection it does.

6           Q       And you were there that night?

7           A       I was there.

8           Q       How far away were you standing when  
9 you looked at them?

10          A       Five, ten feet.

11          Q       And afer the inspector informed you  
12 that the window was open and you saw it opened as  
13 depicted in L No. 1, did you close the window?

14          A       I did close the window.

15          Q       And how did you do that?

16          A       I stepped on the stage while the band  
17 was still playing and I think I asked I drummer,  
18 just let me slide in, and I closed the window.

19          Q       Okay. And did you have to move any  
20 equipment to do that?

21          A       No.

22          Q       Did you ever learn how the window came

1 to be open at that point after you closed -- did  
2 you ever learn how the window came to be open at  
3 that point?

4 A I did.

5 Q And how did come?

6 A The drummer said that he needed some  
7 air so he cracked the window.

8 MEMBER RODRIGUEZ: I'm sorry. I  
9 didn't hear that answer.

10 THE WITNESS: The drummer said that  
11 the needed some air so he cracked the window.

12 MEMBER RODRIGUEZ: Thank you.

13 BY MR. BIANCO:

14 Q And is it you or -- does somebody make  
15 the bands aware of the closed window policy?

16 A We do. And --

17 Q Is that you or Mr. Duggan when you say  
18 that you --

19 A Myself. That's my job.

20 Q And have you ever made this particular  
21 band aware of the closed --

22 A Yes, I have.

1           Q       Did you receive a noise complaint for  
2 anything that happened on the evening of June the  
3 22nd?

4           A       I did not.

5           Q       When you had a conversation with the  
6 inspector that evening did he make you aware that  
7 he received a noise complaint?

8           A       They did not.

9           Q       In your conversation with Mr. Jones  
10 did he ever tell you that Madam's Organ did  
11 things the right way?

12          A       Someone -- I can't recall if it was  
13 Mr. Jones but I was told that the reason they  
14 came by Madam's Organ, the task force came by  
15 Madam's Organ was they wanted to show the whole  
16 team a bar that does it right.

17                   MR. BIANCO: We don't have any further  
18 questions. Thank you, Carlos.

19                   CHAIRMAN MILLER: Okay. Mr. Rivero?

20                   MR. RIVERO: Thank you.

21 CROSS-EXAMINATION

22 BY MR. RIVERO:

1           Q       Mr. Wilcox, when did you inform Mr.  
2 Duggan of the visit and the investigator's  
3 observation the window had been open?

4           A       I don't recall. It could have been  
5 that night. I could have sent him a text or if I  
6 didn't send him a text I definitely called him  
7 the next morning.

8           Q       Okay.

9           MR. RIVERO: No further questions.

10           CHAIRMAN MILLER: Board members? I  
11 have just a few.

12           THE WITNESS: Okay.

13           CHAIRMAN MILLER: Do you have any idea  
14 how long the window was open?

15           THE WITNESS: I do not. I know that I  
16 closed the window during the last set, which  
17 would have been about 10:00 -- but being anywhere  
18 between 10:15 -- I'm sorry, 11:15 and 11:30.

19           CHAIRMAN MILLER: But you closed at  
20 11:15 and 11:30 --

21           THE WITNESS: Yes.

22           CHAIRMAN MILLER: So it was opened by

1 the drummer somewhere between 11:30 and when  
2 Mr.Jones came by?

3 THE WITNESS: They said 1:30.

4 CHAIRMAN MILLER: And what time?

5 THE WITNESS: I think 1:30 is when  
6 that report was --

7 CHAIRMAN MILLER: Whenever Mr.Jones  
8 came by with the task force?

9 THE WITNESS: Correct.

10 CHAIRMAN MILLER: Okay. If you can't  
11 answer this question that's find. I'm just  
12 curious. The next question is do you have an  
13 idea the difference in the sound between when all  
14 the windows are windows are open and when one  
15 window is partially open and live band music  
16 coming out?

17 THE WITNESS: Difference about? I think  
18 it's, with the window partially open I think it's  
19 a huge difference compared to the window, as you  
20 can see -- is this in evidence yet -- Exhibit 2,  
21 with the windows totally open. With the windows  
22 totally open I think it makes -- the windows are

1 open.

2 CHAIRMAN MILLER: Okay.

3 THE WITNESS: So it's partially  
4 cracked, that's going to stop some of that sound  
5 from going outside.

6 CHAIRMAN MILLER: Okay. And, again,  
7 whether you can answer this, the difference  
8 between the sound emanating from the speaker  
9 that's on the porch that I was talking about with  
10 Mr. Duggan versus the sound coming through a  
11 partially open window of a live band?

12 THE WITNESS: You can, when the  
13 windows are totally closed you can still really  
14 hear the band from that speaker that's outside.

15 CHAIRMAN MILLER: Do you know -- you  
16 may not know this because you may not have tested  
17 this but I just was curious, but what's the  
18 difference in sound between -- if you know, the  
19 noise coming from a partially opened window as in  
20 the evening in question versus the speaker? Is  
21 it louder or you don't know or is it softer?

22 THE WITNESS: I think it would make

1 a little difference but it wouldn't make a huge  
2 difference compared to, like I say, those windows  
3 being totally open. It wouldn't make a huge  
4 difference.

5 CHAIRMAN MILLER: Okay. I don't have  
6 any other questions. Mr. Rodriguez?

7 MEMBER RODRIGUEZ: Yes, Mr. Wilcox,  
8 thank you for being here to provide testimony.

9 THE WITNESS: Thank you.

10 MEMBER RODRIGUEZ: I believe Mr. Jones  
11 already indicated that there is no home or  
12 apartment or anything directly across where the  
13 window is.

14 THE WITNESS: Correct.

15 MEMBER RODRIGUEZ: Is that, can you  
16 verify that, sir?

17 THE WITNESS: Correct.

18 MEMBER RODRIGUEZ: Okay, thank you.

19 CHAIRMAN MILLER: Okay, anything else?  
20 Mr. Alberti?

21 MEMBER ALBERTI: Good morning, Mr.  
22 Wilcox.

1 THE WITNESS: Good morning.

2 MEMBER ALBERTI: So I'm going to refer  
3 you to the picture that's labeled L2. You were  
4 here when Mr. Duggan testified that this picture  
5 was, I think in his words, was taken after a  
6 status hearing. Are you aware of when this  
7 picture was taken?

8 THE WITNESS: It was take the last  
9 time we came for a status hearing. We had a  
10 drummer, the drummer actually drove in last time  
11 from Baltimore and he drove in again today.

12 MEMBER ALBERTI: So this was taken  
13 several weeks after the night in question?

14 THE WITNESS: Correct.

15 MEMBER ALBERTI: Thank you.

16 CHAIRMAN MILLER: Others?

17 MEMBER ALBERTI: Wait, I'm not done.

18 CHAIRMAN MILLER: Okay.

19 MEMBER ALBERTI: You've had plenty of  
20 time in this hearing.

21 CHAIRMAN MILLER: No, go right ahead.

22 MEMBER ALBERTI: Please allow me some

1 time.

2 CHAIRMAN MILLER: You can have all the  
3 time. Go ahead.

4 MEMBER ALBERTI: All right, so let's  
5 turn to -- can someone give Mr. Wilcox a copy of  
6 the exhibits from the investigative report?

7 MR. BIANCO: He has my copy.

8 MEMBER ALBERTI: He has a copy? Okay,  
9 great. So can we turn to Exhibit 2 of the  
10 investigator's report, Mr. Wilcox? Are you  
11 looking up that picture?

12 THE WITNESS: Okay, I have it.

13 MEMBER ALBERTI: It's a picture and  
14 there are two people sitting out front.

15 THE WITNESS: Correct, yes.

16 MEMBER ALBERTI: Off to the right  
17 there's a gentleman sitting there, a  
18 distinguished looking gentleman?

19 THE WITNESS: Yes, sir.

20 MEMBER ALBERTI: Is that you?

21 THE WITNESS: No, sir, it's not.

22 MEMBER ALBERTI: It's not? All right.

1       Okay, where were you when Mr. Jones approached  
2       you?

3               THE WITNESS:   I was in the office.

4               MEMBER ALBERTI:   And Mr. Jones  
5       testified that you, after you spoke with him you  
6       closed the window?

7               THE WITNESS:   I did.   I closed the  
8       window.

9               MEMBER ALBERTI:   All right.   What  
10      steps did you have to take to close the window?

11              THE WITNESS:   I just went and pushed  
12      the window closed.

13              MEMBER ALBERTI:   All right, so to open  
14      the window it would just, someone could just open  
15      the window without moving any equipment.   Is that  
16      a correct conclusion?

17              THE WITNESS:   That is correct.

18              MEMBER ALBERTI:   All right, great.   I  
19      have no further questions.

20              CHAIRMAN MILLER:   Others?   Okay,  
21      questions on Board questions?   Okay, thank you  
22      very much.

1 THE WITNESS: Thank you.

2 MR. BIANCO: Wait. We have just once  
3 more witness.

4 CHAIRMAN MILLER: Okay. Good  
5 morning.WHEREUPON,

6 EZELL JONES  
7 was called as a witness by Counsel for the  
8 Defendant and, having been first duly sworn,  
9 assumed the witness stand, was examined and  
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. BIANCO:

13 Q Please state your name for the record  
14 and spell your last name?

15 A Ezell Jones.

16 CHAIRMAN MILLER: You can have a seat.

17 BY MR. BIANCO:

18 Q Mr. Jones?

19 A Yes.

20 Q Were you the drummer in the band that  
21 was playing on the evening in question?

22 A Yes, I was.

1           Q       Okay. And you heard the testimony  
2 here today about the window being open. Do you  
3 know who opened the window that night?

4           A       I did.

5           Q       Okay. And why did you do that?

6           A       Well, first of all, Madam's Organ,  
7 they have a great food menu, so I usually eat,  
8 you know, I usually eat before I perform.

9           Q       Okay, but why did you open the window?

10          A       Why did I open -- why did I?

11          Q       Yes.

12          A       Get a little air, you know.

13          Q       Okay. And how far did you open the  
14 window?

15          A       Just slightly.

16          Q       Okay. And if I can direct your  
17 attention to L1 that you have in front of you,  
18 this photograph.

19          A       Yes.

20          Q       Is that a fair and accurate depiction  
21 of how far the window was open? How far you  
22 opened the window on the evening in question?

1 A Yes.

2 Q And you've played at Madam's Organ  
3 before?

4 A Yes, sir, I have.

5 Q And are you aware of their closed  
6 window policy?

7 A Yes, I am.

8 Q How did you become aware of that?

9 A I'm always told, yeah. Yeah, I'm  
10 always told to make sure the windows are shut  
11 after the first set.

12 Q Now the way your setup was that night,  
13 would you have been able to open the window more  
14 than is depicted in L1?

15 A No.

16 Q Why not?

17 A Because my drums wouldn't allow me to  
18 open the window that far.

19 Q How long was the window open?

20 A Five minutes or so.

21 Q And why did you close -- why was it  
22 closed?

1           A       Why was it closed?

2           Q       Yeah. You opened it. Why was it  
3 closed after you opened it?

4           A       Well, we were playing music. We were  
5 performing.

6           Q       Who closed it? You or someone else?

7           A       I did.

8           CHAIRMAN MILLER: I'm sorry. I  
9 couldn't hear -- why was it closed?

10          THE WITNESS: Why was it closed?

11          CHAIRMAN MILLER: Yeah. What was your  
12 answer to his --

13          THE WITNESS: We were performing.

14          CHAIRMAN MILLER: Because you were  
15 performing?

16          THE WITNESS: Yes.

17          MEMBER ALBERTI: He said he closed it.

18          MR. BIANCO: I don't have anything  
19 further. Thank you.

20          CHAIRMAN MILLER: Mr. Rivero?

21          MR. RIVERO: Thank you.

22          CROSS-EXAMINATION

1 BY MR. RIVERO:

2 Q Mr. Jones?

3 A Yes.

4 Q I don't know whether you have photos  
5 in front of you?

6 A Yes.

7 MR. BIANCO: He does. He has them.

8 BY MR. RIVERO:

9 Q You have these photos that are marked  
10 at the bottom, L -- you see there's an L1 and  
11 there's an L2 at the bottom of the photograph?

12 A I have an L1.

13 Q Okay, that's fine. That's the one I'd  
14 like to turn your attention to. And you  
15 testified that the opening of the window is about  
16 what it was on that evening.

17 A Absolutely.

18 Q That's your testimony. Okay, I'm  
19 going to go ahead and show you the Government's  
20 exhibit that's in evidence. It's the  
21 investigator's report we talked about. The  
22 report has exhibits and one of them is a photo,

1       okay, and it's Exhibit 2 of the Government's  
2       report.                   I want to show you that  
3       photograph. This is a photograph of the front of  
4       the establishment. You can see the window is  
5       open. Is that correct?

6           A       Yes.

7           Q       Okay. Now take a look at L1 again.  
8       See how they're -- they're not really open  
9       similarly, are they? This one's open wider than  
10      that one.

11          A       Definitely.

12          Q       Okay. That's all.

13                 MEMBER ALBERTI: Mr. Rivero, just for  
14      the record --

15                 CHAIRMAN MILLER: Yeah.

16                 MEMBER ALBERTI: -- could you say this  
17      one is open and why are they open --

18                 MR. RIVERO: Yeah, Exhibit 2, the  
19      witness has testified, Exhibit 2 the window was  
20      open wider --

21                 MEMBER ALBERTI: Okay, thank you, just  
22      for the record. Appreciate that.

1 MR. RIVERO: -- than in the photograph  
2 denoted L1.

3 MEMBER ALBERTI: Thank you.

4 MR. RIVERO: No further questions.  
5 Thank you.

6 CHAIRMAN MILLER: Board questions?  
7 All right. I just want to ask you if you could  
8 elaborate on one thing. You said you opened the  
9 window because you needed air?

10 THE WITNESS: Yes.

11 CHAIRMAN MILLER: Can you elaborate on  
12 that at all?

13 THE WITNESS: Well, problem is the air  
14 because after I finished eating, I was finished  
15 eating -- I ordered beans and rice and collard  
16 greens, so.

17 CHAIRMAN MILLER: Oh, no. Yes, okay.

18 THE WITNESS: So, hey, you know,  
19 that's a problem that needs to be aired.

20 CHAIRMAN MILLER: Oh, okay. All  
21 right, I have no further questions.

22 MEMBER ALBERTI: I have a question,

1 first question.

2 CHAIRMAN: Mr. Alberti.

3 MEMBER ALBERTI: Good afternoon, Mr.  
4 Jones.

5 THE WITNESS: How are you doing?

6 MEMBER ALBERTI: I'm doing well, thank  
7 you. You testified that you closed the window,  
8 correct?

9 THE WITNESS: Yes, I closed it after  
10 I opened it up and I needed the air. After --

11 MEMBER ALBERTI: Okay, okay, did you  
12 just -- just --

13 THE WITNESS: No, no, because I'm  
14 aware that the window must be shut, you know.

15 MEMBER ALBERTI: Okay, so you closed  
16 it. What prompted you to close it?

17 THE WITNESS: What prompted me to  
18 close it was because we were performing at the  
19 time.

20 MEMBER ALBERTI: Okay, very good. So  
21 it was your -- you voluntarily, without being  
22 told to, closed the window?

1 THE WITNESS: Yes.

2 MEMBER ALBERTI: Okay, thank you.

3 THE WITNESS: Yes.

4 CHAIRMAN MILLER: All right, well, let  
5 me ask you this, sir, because we heard testimony  
6 from Mr. Jones that the window was open when the  
7 band was playing music. Are you saying it  
8 wasn't?

9 THE WITNESS: Am I saying that the  
10 window wasn't closed?

11 CHAIRMAN MILLER: Wasn't open when you  
12 were playing at all?

13 THE WITNESS: What I'm saying is that  
14 I opened the window --

15 CHAIRMAN MILLER: Mm-hmm.

16 THE WITNESS: -- for at least, for  
17 that amount of time that I needed to open it.  
18 And then I shut it.

19 CHAIRMAN MILLER: You're saying you  
20 shut it?

21 THE WITNESS: Yes.

22 CHAIRMAN MILLER: Okay. Anything

1 else?

2 MEMBER RODRIGUEZ: That's it.

3 CHAIRMAN MILLER: Mr. Short?

4 MEMBER SHORT: Good morning, Mr.

5 Jones.

6 THE WITNESS: Good morning.

7 MEMBER SHORT: I head Mr. Wilcox  
8 testify that he shut a window. Was that the  
9 window -- is that where you had already shut the  
10 window? Is that the same window? Mr. Wilcox  
11 testified he shut window after he was notified by  
12 the investigator. So had someone opened the  
13 window after you had closed it?

14 THE WITNESS: I opened it.

15 MEMBER SHORT: I'm asking you the  
16 question again. Are you aware that Mr. Wilcox  
17 closed the window?

18 THE WITNESS: I'm not aware of that,  
19 no.

20 MEMBER SHORT: No further testimony,  
21 Your Honor.

22 CHAIRMAN MILLER: Any others? Okay,

1       that's it for Board questions. Any questions on  
2       Board questions?

3               MR. BIANCO: I don't have any more.

4               CHAIRMAN MILLER: No?

5               MR. BIANCO: I'm sorry, to the extent  
6       I haven't moved L1 and 2, I move into evidence.

7               MR. RIVERO: No objection from the  
8       Government.

9               CHAIRMAN MILLER: Okay, then L1 and L2  
10       are admitted into evidence.

11               (Whereupon, the document previously  
12       marked as Licensee Exhibits 1 and 2 for  
13       identification was received into evidence.)

14               CHAIRMAN MILLER: Thank you very much,  
15       sir. Okay, closing?

16               MR. RIVERO: Thank you.

17               CHAIRMAN MILLER: Mm-hmm.

18               MR. RIVERO: Board members, to  
19       paraphrase what is happening to the windows, this  
20       is an open and shut case.

21               MEMBER ALBERTI: Oh.

22               MR. RIVERO: There has been a lot of

1 testimony before you board members that is really  
2 not relevant to the matters at hand. So I will  
3 start with a list of what you really should not  
4 be considering because it's not simply relevant  
5 to this case.

6 This case is not about cooperation so  
7 if there was a window open and there was a band  
8 playing and the agreement says you can't do that,  
9 then whether they're cooperating or belligerent  
10 is really not relevant. It's good to know. We  
11 want cooperation but it's simply not a basis to  
12 rule that the Government didn't meet its burden  
13 my a preponderance of the evidence.

14 Another thing that is completely  
15 irrelevant is the Noise Task Force. The  
16 investigator could have been assigned on the  
17 night shift to do his regular investigative  
18 duties, completely disconnected from the Noise  
19 Task Force, and could have walked by and observed  
20 the same thing and we would still be here today.

21 Therefore, any history of the Noise  
22 Task Force, any history of the list of these

1 establishments and whether or not there was a  
2 complaint of noise against this particular  
3 licensee is completely irrelevant and should not  
4 be considered in the decision.

5 Furthermore, noise itself is not the  
6 issue, and I actually agree with the licensee.  
7 This is not a loud noise case. This is a case of  
8 a particular violation of the licensee's  
9 settlement agreement. And I'll get into that in  
10 a moment.

11 So the fact that someone complained or  
12 didn't complain or the fact that the noise could  
13 be heard in someone's premises or in a shop  
14 across the street, that aspect of the case is  
15 really not relevant to why the Government is here  
16 today. Why we're here today, though, has  
17 everything to do with the settlement agreement  
18 and the words on the page.

19  
20 And it reads, as has been testified,  
21 "Except when persons are in the act of using the  
22 door for ingress to or egress from the premises,

1 the doors and windows of the establishment will  
2 remain closed from 12:30 a.m." which is  
3 relevant, "until closing" which is relevant, "when  
4 live music" also relevant, "is being played or a  
5 sound amplification device other than the loud  
6 speaker" -- it's actually called a loud speaker  
7 in the settlement agreement, "referenced in  
8 Paragraph (d) below, is being employed in the  
9 premises."

10 Now there is a Paragraph (d) and it  
11 says the parties recognize that there is a loud  
12 speaker that can be maintained, provided,  
13 however, that the Applicant agrees not to place  
14 outside in the public space any additional loud  
15 speaker -- and we don't have any evidence of that  
16 in this case that that ever took place -- or  
17 similar device or to place any inside speaker in  
18 such a way that it projects loud sound into the  
19 public space.

20 The investigator was in the public  
21 space. The investigator was on the sidewalk.  
22 Must is made as to whether the sound was coming

1 from the speaker or coming from the window. And  
2 there is information, evidence to suggest that  
3 even if the speaker was the only thing that was  
4 projecting sound, that it was heard in the public  
5 space by the investigator. But that's really not  
6 what the case is about either.

7 Paragraph 2 says, if there's live  
8 music being played the windows shall be closed.  
9 That's what this case is about. And on that  
10 score you have testimony that there were  
11 photographs taken to show the distance of opening  
12 of the window on another date, many months later.

13 But there's also the testimony of the  
14 investigator that evening, on the spot, taking a  
15 photograph that clearly shows that the window was  
16 open wider than the testimony that has presented  
17 today by the licensee's witnesses -- pictures of  
18 the warrants, et cetera, et cetera, witnesses'  
19 testimony has also been placed on the record that  
20 this window is open much more widely than the  
21 photographs that were presented here.

22 And that was the case, is the

1 investigator could hear the band playing whether  
2 it was through the open window, through the  
3 speaker is not really something that is going to  
4 make or break the case. The Government has  
5 presented the testimony. The window was open,  
6 the band was playing, the investigator made that  
7 observation. The agreement says you can't do  
8 that. End of the story. And that's how we shut  
9 the case here.

10 Now none of the Government's evidence  
11 is meant to impune the licensee's motives. No on  
12 here is, on the Government's end, is providing  
13 evidence to say that the licensee was not  
14 cooperative, not a good citizen, not a good  
15 business. We admit all of that and we concede  
16 all of that. Even if that were the case the most  
17 perfect business in the world sometimes may have  
18 a violation of an agreement. That's what we have  
19 here. So this is not to impune anyone's  
20 character, but it's simply a violation.

21 Now on the case of whether the  
22 violation itself could be termed, the legal word

1 is de minimus, right, something that is just so  
2 minor that we ought to just not pay attention to  
3 this. On that score what you need is evidence to  
4 show that there was a violation. My job is to  
5 prove by preponderance of the evidence that that  
6 took place. I'm fairly confident that that's the  
7 case.

8           Whether or not you choose to levy a  
9 higher or lower fine, how you fashion any penalty  
10 is, in fact, or could be influenced by  
11 information concerning the character of the  
12 licensee and cooperation and the like. But  
13 that's separate from my job here today to prove  
14 to you that I've introduced enough evidence to  
15 show a violation, and I think that I have.

16           So hopefully we will focus on what is  
17 exactly important. And all of the other  
18 information is either irrelevant or useful for  
19 when it comes to you all, within your purview, to  
20 fashion a proper penalty in this case. Thank you  
21 very much.

22           MR. BIANCO: Thank you, Madame Chair.

1                   CHAIRMAN MILLER:   Yes.

2                   MR. BIANCO:   Members of the Board.   If  
3   you looked at the settlement agreement, it's not  
4   as clear as the Government represents, is that  
5   windows didn't close.   In this case the windows  
6   were not open.   One window was cracked.   Why am I  
7   parsing so narrowly the provisions of the  
8   settlement agreement on such a -- I mean, let's  
9   face it, this isn't the crime of the century --  
10   on such a small case.   In essence, why are we  
11   really here?

12                  We're really here because my client  
13   operates in a neighborhood with an ANC that, to  
14   say is active is an understatement.   It has  
15   active citizens associations.   All that is great  
16   because it's part of the process.   But we have to  
17   be very careful and these small ticky-tack  
18   violations that might, that establishments get  
19   accused of are used in licensing matters and  
20   renewal matters.

21                  And we have to aggressively fight violations  
22   because of how active the local government is.

1 I'm not saying that's a bad thing. I'm just  
2 saying we have to be extra vigilant and we're not  
3 in the business of making a federal case out of,  
4 in essence the maximum violation is a small --  
5 maximum penalty is a small fine. So that's why  
6 we're here.

7 The testimony you heard today  
8 establishes a couple of things that we think are  
9 very important. My client, as a business, is  
10 aware of the restrictions in the voluntary  
11 agreement. They go to lengths to put a policy  
12 and a procedure in place to see that the  
13 agreement is complied with. And they take active  
14 measures during the course of their evening to  
15 ensure compliance.

16 In this case there was an intervening  
17 act of a third party. The third party works as a  
18 member of a band that was hired by my client to  
19 perform live music. He admitted to opening the  
20 window. He did. It wasn't a member of my  
21 client's staff. And when it was discovered by  
22 Mr. Wilcox it was closed.

1                   Now, unfortunately, it was discovered  
2                   when he was told by an inspector, but as soon as  
3                   it was discovered he, in fact, took measures to  
4                   see that any issue was corrected. And it's our  
5                   contention that it should have ended there. If I  
6                   could address, for a moment, the photo that is  
7                   attached as Exhibit 2 to the inspector's report,  
8                   I don't think it shows what the Government says  
9                   that is shows.

10                   I think it's a dark photo and it is,  
11                   at best, inconclusive as to how far the window  
12                   was reportedly open and I don't think it's  
13                   accurate to say that it shows the window open  
14                   much wider than in L1 which shows how the window  
15                   was cracked on the evening in question.

16                   And I think, from an evidentiary  
17                   standpoint, if you look at Exhibit No. 2 to the  
18                   inspector's report you can see that, through the  
19                   window or window opening, there are three lights,  
20                   one of which is clearly haloed and shining  
21                   through a window.

22                   So if that gives you an indication -- that

1 does give you an indication of how far that  
2 window was open, which we contend is consistent  
3 with the much clearer depiction in L1.

4 At the end of the day, based on the  
5 interpretation of the agreement that we put in  
6 front of you, we think the Board should find no  
7 violation in this case. We show a little wrong  
8 and my client will continue to be vigilant about  
9 enforcing their closed windows policy as they  
10 have in the past. This is not a problem  
11 establishment. This is an establishment that  
12 does not have any violations. We would work  
13 very, very hard to keep it that way. Thank you.

14 CHAIRMAN MILLER: Okay, thank you. So  
15 I'm going to close the record at this time and  
16 ask the parties if they want to file the  
17 cosigning the fact and conclusions of the law.

18 MR. RIVERO: Government waives.

19 CHAIRMAN MILLER: Okay.

20 MR. BIANCO: We also waive.

21 CHAIRMAN MILLER: Okay, good. So court  
22 will deliberate in closed session and you will

1 have an order within 90 days. And I will take a  
2 closed, I will take a vote on the Board  
3 deliberating in closed session. As chairperson  
4 of the Alcoholic Beverage Control Board for the  
5 District of Columbia and in accordance with DC  
6 Official Code Section 2-574(b) of Open Meetings  
7 Act, I move that the ABC Board hold a closed  
8 meeting for the purpose of seeking legal advice  
9 from counsel on Case No. 14-CMP-00325, Madam's  
10 Organ, pursuant to Section 2-574(b) for Open  
11 Meetings Act and deliberating upon this case for  
12 the reasons cited in Section 2-574(b)(14) of the  
13 Open Meetings Act. Is there a second?

14 MEMBER RODRIGUEZ: Second.

15 CHAIRMAN MILLER: Mr. Rodriguez  
16 seconded the motion. I'll now take a roll call  
17 vote on the motion before us now that it's been  
18 seconded. Mr. Brooks?

19 MEMBER BROOKS: I agree.

20 CHAIRMAN MILLER: Mr. Alberti?

21 MEMBER ALBERTI: I agree.

22 CHAIRMAN MILLER: Mr. Rodriguez?

1 MEMBER RODRIGUEZ: I agree.

2 CHAIRMAN MILLER: Ms. Miller agrees.

3 Mr. Silverstein?

4 MEMBER SILVERSTEIN: I agree.

5 CHAIRMAN MILLER: And Mr. Short?

6 MEMBER SHORT: I agree.

7 CHAIRMAN MILLER: It appears that the  
8 motion was passed by a 6-0-0 vote. I hereby give  
9 notice that the ABC Board will hold its  
10 aforementioned closed meeting in the ABC Board  
11 conference room pursuant to Section 2-574(b) of  
12 the Open Meetings Act and issue a written  
13 decision within 90 days. Okay, thank you very m  
14 much. MR. BIANCO: Thank you.

15 CHAIRMAN MILLER: Okay. Okay, that  
16 concludes our business for this morning. And we  
17 will recess. Our next hearing is at 1:30 p.m.  
18 All right, thank you.

19 (Whereupon, the foregoing matter went  
20 off the record at 11:25:33 a.m.)  
21  
22

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